NELDA E. McANDREW

IBLA 76-211 Decided March 22, 1976

Appeal from action of the Idaho State Office, Bureau of Land Management, holding appellant's desert land application I-8175 deficient and granting priority to subsequently filed but completed desert land application I-8859.

Remanded.

1. Administrative Practice -- Applications and Entries: Filing -- Applications and Entries: Priority -- Desert Land Entry: Applications -- Rules of Practice: Appeals: Generally

Where a desert land applicant appeals from a decision of the Bureau of Land Management holding his application incomplete and, therefore, without priority of filing as against a subsequent application, which was allegedly perfected before the earlier application was corrected and refiled, the case will be remanded for final action on the respective applications so as to avoid premature, piecemeal adjudication.

APPEARANCES: William F. Ringert, Esq., Anderson, Kaufman, Anderson and Ringert, Boise, Idaho, for appellant; Kenneth G. Bergquist, Esq., Boise, Idaho, for appellee, Joseph E. Davidson.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Nelda E. McAndrew filed desert land application I-8175 in the Idaho State Office, Bureau of Land Management (BLM), on March 28, 1974. By letter dated September 4, 1974, BLM advised her of two minor discrepancies in her application which she had to correct

before she could have any priority of consideration, and that desert land application I-8275 had been filed for a large part of the land which she sought. Mrs. McAndrew was granted a period of 30 days within which to file a corrected application.

In response to question 3a of the application, "Are you 21 years of age or older," appellant placed an "x" in the "No" box. However, a statement signed by her and accompanying the initial application recited that she "was married to James Dewayne McAndrew on August 27, 1954."

Similarly, the estimated annual farm budget she submitted as a part of her initial application contained arithmetical errors. It shows total costs of $131,047 and a net income of $58,483 in lieu of the correct figures of $129,785 and $57,231, respectively.

On September 6, 1974, Mrs. McAndrew filed a corrected application. By letter of August 8, 1975, BLM informed her that desert land application I-8859 had been filed August 30, 1974, for most of the land she sought, that another application (I-8275) had been rejected, and that her corrected application of September 6, 1974, was considered to be junior to application I-8859 of Joseph E. Davidson. From this letter Mrs. McAndrew appeals.

Appellant submitted a copy of Johnson v. Montgomery, 17 L.D. 396 (1893), in order to bolster her claim to priority.

Appellee asserts that appellant's application must be rejected since he is, and she is not, a member of the Bell Rapids Mutual Irrigation Company. He states that the "foregoing lands lie within the area approved by the Bureau for the Bell Rapids Project for which * * * [the] Company was approved as the source of water."

[1] It is clear that if BLM rejects appellant's application she would have a right of appeal, but in its present posture the case is not ripe for consideration by this Board. Michael E. Heaney, 21 IBLA 339 (1975); George M. Crapo, 19 IBLA 208 (1975). If BLM should finally act on appellant's application in a manner adverse to her interests, a proper appeal from such action would afford a sufficient basis for our consideration. As we noted in Crapo, it would be advisable for BLM to take virtually simultaneous action on the applications in order to avoid premature, piecemeal adjudication. However, appellant's application shall be considered first.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the cases are remanded for appropriate action.

Frederick Fishman
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

I concur with the majority opinion only because I agree that "piecemeal" adjudication is to be avoided and because of the remands recently ordered by this Board in the correlative appeals of George M. Crapo, 19 IBLA 208 (1975), and Michael E. Heaney, 21 IBLA 339 (1975). Otherwise, I would reverse the decision outright.

The practice of rejecting desert land entry applications, with the consequent loss of the applicant's priority, for such "deficiencies" as an obvious typographical error, or a minor arithmetical error in the hypothetical projection of anticipated farm income, or the omission of some detail of information not specifically required, is unwarranted.

One object of the priority-of-filing concept is to eliminate the need for BLM personnel to select from among the competing applicants, with the attendant concern for real or imagined prejudice or favoritism. This safeguard is set at naught, however, if it is made to appear that those applicants who were first in time can be selectively eliminated by the assertion that any error found in the application, no matter how trivial or inconsequential, is fatal.

In the instant case the applicant provided sufficient information to apprise the Bureau of the true facts. Her inadvertent marking of the wrong check-block indicating that she was under 21 years of age was quite obviously negated by her statement that she was married in 1954, unless there was cause to disbelieve the statement. The correct answers to the mathematical computations were obvious to the BLM adjudicator, as was the fact that appellant's miscalculations were pure inadvertence and not a deliberate attempt to mislead. Moreover, the result reached by the applicant was sufficiently close to being correct so that the error was of no real significance anyway. The figures were only an attempt to project an anticipated yield on the basis of an anticipated investment, and it would be astonishing if they had any precise validity in practical application. They are merely "ballpark" projections. Therefore, an error of less than one percentage point is meaningless.

A desert land entry application is, by far, the most complex and difficult type of application received by BLM, and thus offers abundant opportunity for such errors. Moreover, the amount of land available for such entry is very limited, and the priority of an individual applicant is commensurately valuable. To destroy what probably is the only opportunity the applicant will ever have to make such an entry on the basis of some trifling, inconsequential error is wholly unjustified.

By analogy, if all the income tax returns containing minor errors were held past the due date and then rejected by the Internal Revenue Service as improperly filed, the result would be cataclysmic.

I am aware that in oil and gas leasing we have strictly held that an application must be accurately completed in order to earn priority. Lease offers, however, require only information which is essential to adjudication of the offer. Also, the administrative burden of processing tens of thousands of such offers makes compliance with the administrative requirements (number of copies, signatures, etc.) mandatory. But even in oil and gas leasing there is, or should be, a tolerance of inconsequential error. For example, I would not sustain the rejection of a lease offer on the ground that the offeror had misspelled the name of a national forest, a meridian, or a county if the spelling given created no genuine doubt.

It is my position that no application should be summarily rejected for error unless the error or omission relates to information expressly and specifically required to be furnished and is of such significance that it would preclude favorable consideration.

In my opinion the Idaho State Office is placing too high a premium on absolute precision, pro forma.

Edward W. Stuebing
Administrative Judge